APPENDIX

The Florida Documentary Stamp Tax Law (Chapter 15787, Laws of Florida 1931, Ex. Sess.; Section 1279, Sub-Sections 111 et seq., Comp. Gen. Laws of Florida, 1934 Supp.) is set forth in full below, to-wit:

AN ACT Levying and Imposing an Excise Tax on Documents to Raise Revenue for the Support of the State Government; and Prescribing Penalties for Failure to Pay Said Tax.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That on and after the passage of this Act, there shall be levied, collected and paid for and in respect of the several documents, bonds, debentures or certificates of stock and indebtedness, and other documents, instruments, matters, writings, and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such document, instrument, matter, writing, or thing, or any of them, are written or printed by any person, firm, association, or corporation who makes, signs, executes, issues, sells, removes, consigns, assigns, or ships the same, or for whose benefit or use the same are made, signed, executed, issued, sold, removed, consigned, assigned, or shipped in the State of Florida, the taxes specified in said Schedule A.

SCHEDULE A.

On all bonds, debentures, or certificates of indebtedness issued in the State of Florida by any person, firm or corporation, and all instruments and documents, however termed, issued by any corporation with interest coupons or in registered form, on each $100 of the face value or fraction thereof, 10c, provided, however, that only that part of the value of the bonds, debentures, or certificates of indebtedness issued by any such person, firm or corporation, the property of which is located within the State shall bear to the whole value of the property described in said instrument or obligation shall be taxed hereunder.

On each original issue, whether organization or reorganization, of certificates of stock issued in the State of Florida, or of profits, or of interest in property or accumulations, by any corporation, on each $100.00 of face value, or fraction thereof, 10c: Provided, that where a certificate is issued without face value, the tax shall be 10c per share, unless the actual value is in excess of $100.00 per share, in which case the tax shall be 10c on each $100.00 of actual value or fraction thereof. The stamps representing the tax imposed by this subdivision shall be attached to the stock books, and not to the certificates issued.

On all sales, agreements to sell, or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interests, rights, or not, on each $100.00 of face value or fraction thereof 10c; and where such shares are without par or face value, the tax shall be 10c on the transfer or sale or agreement to sell on each share: Provided, that in case of sale, where evidence of transfer is shown only by the books of the corporation, the stamps shall be placed upon such books of the corporation; and where the change of ownership is by transfer of the certificate, the stamps shall be placed upon the certificates; and in case of an agreement to sell or where the transfer is made by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned, shall show the date thereof, the name of the seller, the amount of the sale, and the matter or things to which it refers. Any person or corporation liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or corporation, or who makes any such sale, or who in pursuance of any such sale, delivers any certificate

or evidence of the sale of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished accordingly.

On promissory notes, non-negotiable notes, written obligations to pay money, assignment of salaries, wages, or other compensation, made, executed, delivered, sold, transferred, or assigned in the State of Florida, and for each renewal of the same on each $100.00 of the indebtedness or obligation evidenced thereby, 10c. Mortgages which incorporate the certificate of indebtedness, not otherwise shown in separate instruments, are subject to the same tax at the same rate.

On deed, instruments, or writings, whereby any lands, tenements, or other realty or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers or any other person or persons, by his, her, or its direction, on each $100.00 of the consideration therefor, 10c: Provided, that when the full amount of the consideration for the execution, assignment, transfer, or conveyance, is not shown in the face of such deed, instrument, document, or writing, then in such event the tax shall be at the rate of 10c for each $100.00 or fractional part thereof of the consideration therefor.

On proxies for voting at any election for officer or meeting for the transaction of business of any corporation, except religious, educational, charitable, fraternal, or literary societies, or public cemeteries, 10c each.

On powers of attorney granting authority to do or perform some act for or in behalf of the grantor, which authority is not otherwise vested in the grantee, 10c.

Section 2. That the administration of this Act shall be vested in the Comptroller of the State of Florida, who shall prescribe suitable rules and regulations for the enforcement of the provisions thereof, and shall administer and enforce the taxes levied and imposed by this Act. He shall have

power to enter upon the premises of any taxpayer, and to examine or cause to be examined by any agent or representative designated by him for that purpose, any books, papers, records, or memoranda bearing upon the amount of taxes payable, and to secure other information directly or indirectly concerned in the enforcement of this Act. Any person, firm or corporation subject to this tax, who shall by any practice or evasion make it difficult to enforce the provisions of this Act by inspection, or any person, firm or corporation, agent or officer thereof, who shall, after demand by the Comptroller or any agent or representative designated by him for that purpose, refuse to allow full inspection of the premises or any part thereof, or any books, records, documents, or other instruments in any way relating to the liability of the tax payer for the tax herein imposed, or shall hinder or in any wise delay or prevent such inspection shall be guilty of a misdemeanor, and upon conviction shall be punished accordingly.

Clerks of the Circuit Court shall report to the Comptroller the names and addresses of any and all individuals, firms or corporations, who shall fail to have affixed the required amount of stamps of any conveyance or taxable instrument or document which may be recorded in their respective offices; and any such Clerk who knowingly fails to report any such violation within thirty days after recording of any taxable instrument or document, without such stamps, shall be deemed guilty of a misdemeanor and upon conviction punished accordingly.

Section 3. The Comptroller of the State of Florida shall cause to be prepared and distributed for the payment of the taxes prescribed in this Act, suitable stamps denoting the tax on the documents to which same are required to be affixed, and shall prescribe such method for the affixing of said stamps as shall be necessary to carry out and comply with the intent and purpose of this Act.

All revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this Act, so far as applicable, for the purpose of collecting stamp

taxes omitted through mistake or fraud from any instrument, document, paper, or writing named herein.

Section 4. Whoever makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document or paper of any kind or description whatsoever, without the full amount of the tax herein imposed thereon being fully paid, or whoever makes use of any adhesive stamp to denote any tax imposed by this Act, without cancelling or obliterating such stamps are herein provided, shall be guilty of a misdemeanor, and upon conviction shall be punished accordingly.

Whoever fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act, any adhesive stamp used in pursuance of this Act, or fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act (1) any adhesive stamp which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act, or (2) any adhesive stamp of insufficient value, or (3) any forged or counterfeited stamp; or whoever wilfully removes or alters the cancellation or defacing marks of, or otherwise prepares any adhesive stamp with intent to use or cause the same to be used after it has already been used, or knowingly or wilfully buys, sells, offers for sale, or gives away any such washed or restored stamp to any person for use, or knowingly uses the same, or whoever knowingly and without lawful excuse has in possession any washed, restored, or altered stamp which has been removed from any vellum, parchment, paper, instrument, writing, or document; or whoever knowingly or willfully prepares, buys, sells, offers for sale, or has in his or its possession any counterfeit stamps, shall be guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than Five Hundred ($500.00) Dollars, or imprisonment of not less than Twelve Months, or both at the discretion of the Court.

Section 5. That whenever an adhesive stamp is used for denoting any tax imposed by this Act on documents, the person using or affixing the same shall write or stamp or cause to be written or stamped thereon, the initials of his or its name, and the date upon which same is attached or used, so that the same may not again be used. Stamps shall be affixed in such manner that their removal will require continued application of steam or water; provided, that the Comptroller of Florida may prescribe such other method for the cancellation of such stamps as he may deem expedient.

Section 6. All taxes collected under the provisions of this Act shall be paid into the State Treasury to the credit of the General Revenue Fund of the State of Florida, to be used and expended for the purposes for which said General Revenue Fund was created and exists by law.

Section 7. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed.

SUPREME COURT OF THE UNITED STATES.

No. 944.—October Term, 1933.

J. M. Lee, as Comptroller of the State of Florida, Appellant, *vs.* John P. Bickell, et al., Appellees.	Appeal from the District Court of the United States for the Northern District of Florida.

[May 21, 1934.]

Mr. Justice Cardozo delivered the opinion of the Court.

The appellees, complainants in the court below, have brought this suit against the appellant, the Comptroller of the State of Florida, to restrain the enforcement of a Florida statute for the levy and collection of stamp taxes upon the documents described in the bill of complaint.

Their contention has been and is that the statute, properly construed, does not apply to the transactions stated in the bill, and that, if so applied, it is in conflict with the due process and commerce provisions of the Constitution of the United States. Amendment XIV; Art. I, Sec. 8.

A District Court of three judges granted an interlocutory injunction (5 F. Supp. 720), which thereafter was made permanent. The case is in this court upon an appeal by the state Comptroller. Judicial Code, sec. 266; 28 U. S. C., sec. 380.

The Florida statute (Chapter 15,787, Laws of Florida, 1931) imposes a stamp tax upon all bonds or certificates of indebtedness issued in Florida; upon each original issue of certificates of stock; and upon all sales of stock or certificates of stock, agreements to sell, memoranda of sales or deliveries, or transfers of title, the stamps to be placed upon the certificates if the assignment of the certificate is to a person named therein, and upon a written memorandum which the seller is required to execute and deliver to the buyer if there is either an agreement to sell or a transfer of title by delivery of a certificate assigned in blank. The

provisions of the statute so far as material are printed in the margin.*

The appellees are stockbrokers engaged in business in the City of New York with branch offices in Florida. Orders to buy or sell received from Florida customers are transmitted by the Florida branches, and are executed in New York in accordance with the customs of the Stock Exchange. The Comptroller does not contend that any document signed by the brokers in New York is subject to the tax. To the contrary there is a concession that the stamp taxes applicable to such transactions are those imposed by the New York statute (New York Tax Law, § 270) and by a statute of the United States (26 U. S. C. § 901 [3]), which are substantially the same as the stamp tax law of Florida. What the Comptroller contends is this, that after the transaction is executed in New York, where certificates and memoranda are stamped under the New York and federal statutes, there are certain supplementary papers, copies of the original memoranda, or receipts, or entries in the books, which are signed by the managers or employes of the Florida branches, or on occasion by the customers. These, it is said, are memoranda of sales or deliveries within the meaning of the Florida statute. A tax is also claimed where a written order for the sale of shares is signed by a Florida customer and delivered to the Florida agent for transmission to the central office.

*"On all sales, agreements to sell, or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interests, rights, or not, on each $100.00 of face value or fraction thereof 10¢; and where such shares are without par or face value, the tax shall be 10¢ on the transfer or sale or agreement to sell on each share; Provided, that in case of sale, where evidence of transfer is shown only by the books of the corporation, the stamps shall be placed upon such books of the corporation; and where the change of ownership is by transfer of the certificate, the stamps shall be placed upon the certificates; and in case of an agreement to sell or where the transfer is made by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned, shall show the date thereof, the name of the seller, the amount of the sale, and the matter or things to which it refers."

The application of the statute to these and similar situations will be determined more easily when the course of business, first in respect of purchases, and next in respect of sales, has been traced in greater detail. What that course of business is appears very clearly from the stipulated facts.

Upon the transmission to New York of an order for the purchase of shares of stock and after the execution of the order upon the floor of the Exchange, the buying and selling brokers sign and exchange what is known as an "exchange contract." There is no contention by the Comptroller that this is taxable in Florida. When the shares are delivered, the rules call for the exchange of what is known as a "sales ticket," a memorandum of the transaction, which bears the stamps required by the Federal Stamp Tax Act and by the statute of New York. 26 U. S. C. § 901 [3]; New York Tax Law, § 270. There is no contention that the sales ticket is taxable in Florida. After the execution of the order, the New York office reports the transaction by telegraph over its private wire to the Florida branch, where an employe receives the telegram and reduces it to writing. This copy according to the contention of the Comptroller is a memorandum of sale within the meaning of the Florida statute, and must be stamped accordingly. Another copy of the telegram is commonly, but not invariably, delivered by the branch office to the customer. This too is claimed by the Comptroller to be a taxable memorandum, though a stamp is not required if one has been affixed to the copy retained for the office files. In addition to the telegraphic notice to its Florida representatives, the New York office follows the practice of sending notice of the purchase by mail directly to the customer. No stamp is required for this notice, which is signed and transmitted in New York. Finally when the purchase has been completed by delivery, there are times when the New York office, instead of holding the certificates for the account of its Florida customer, forwards them to him by registered mail. When this is done a form of receipt is enclosed, which the customer is asked to sign. The Comptroller contends that this receipt, if signed in Florida, is subject to a stamp tax as a memorandum of delivery.

The course of dealing upon an order for the sale of shares does not differ in essentials, so far as the present subject of inquiry is concerned, from that upon an order to buy. By concession the